Serial No.: 10/065,972
Confirmation No.: 3821
Applicant: SVENSSON, Gösta *et al.*
Atty. Ref.: 00173.0023.PCUS00

REMARKS:

Initially, Examiner's careful attention to the instant application is acknowledged with appreciation.

Pursuant to Section 1. **(Priority)** of the Action, Applicant encloses herewith a copy of PCT/SE01/01231, the benefit of which the present application claims; the same being now abandoned.

Applicant's incorporation by reference is respectfully asserted as being permissible according to MPEP 608.01(p) I. A. subsections 1 and 2; therefore, amendment to the first paragraph of the application has not been affected.

Paragraphs 17 and the Abstract have been amended according to Examiner's requirement.

Fig. 2 has been amended as required by Examiner; a formal version is submitted herewith.

Serial No.: 10/065,972
Confirmation No.: 3821
Applicant: SVENSSON, Gösta *et al.*
Atty. Ref.: 00173.0023.PCUS00

IN RESPONSE TO THE OFFICE ACTION:

FIRST REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH:

Claims 1-20 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant submits that the state of the art at the time the present invention was made, and at the time the present application was filed was such that persons skilled in the relevant art (designers and manufacturers of control systems for heavy equipment pieces) would understand, once disclosed as by Applicant, the inter-connective and functional relationship(s) of a "control unit" governed vehicle, as well as the several subsystems (brakes and gearbox), thereof. Still further, Applicant's utilization of the terminology "control unit" is generally understood, even by persons not skilled in this particular art as is evidenced by the enclosed definition of "control unit" from Webster's Online Dictionary {Exhibit A hereto} which states that "a control unit is the part of a CPU or other device that directs its operation." Further it is stated in the definition that "[t]he outputs of the unit control the activity of the rest of the device."

This being said, Applicant's claimed invention is in fact legally conveyed to person's skilled in the relevant art via the disclosure of Applicant's specification, even though each and every physical aspect of the several components/subsystems are not described in detail; the level of detail is sufficient given the state of the art.

The formalities cited by Examiner in Section 7 of the Action have been remedied by amendment.

Further, the independent claims have now been amended to specify the operable/governing association between the control unit, maneuvering organ, vehicle brakes and gearbox. Applicant submits that the above amendments taken in view of the discussion found hereinabove obviate the rejection of the claims under 35 U.S.C. §112, first paragraph and thus ask that the Examiner reconsider and withdraw the rejection of the claims and indicate their allowance in the next paper from the Office.

Serial No.: 10/065,972
Confirmation No.: 3821
Applicant: SVENSSON, Gösta *et al.*
Atty. Ref.: 00173.0023.PCUS00

REJECTION UNDER 35 U.S.C. § 102(b):

Claims 1, 4, 9, 10, 12-14, 18 and 19 have been rejected under 35 U.S.C. §102(b) as being anticipated by Palmer (US 4,560,148). In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following.

For there to be anticipation under 35 U.S.C. § 102, "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986) ("absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477, 44 U.S.P.Q.2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Corp. V. Lydall, Inc.*, 159 F.3d 534, 545, 48 U.S.P.Q. 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 U.S.P.Q. 2d 1655, 1657 (Fed. Cir. 1990).

Each of the independent claims has been amended to recite that the device is installed in a load-carrying vehicle having a dumping load-carrying platform. *Palmer* '148 does not disclose this arrangement. Additionally, the Action alleges, without further explanation, that Fig. 2 of *Palmer* '148 discloses a control unit. Applicant respectfully asserts that no control unit, as recited in the present claims, is disclosed as asserted, and without explanation - and therefore, the rejection is respectfully traversed.

For the above reasons Applicant submits that nowhere in the Palmer reference is there any disclosure to modify the structure shown in a manner to achieve the claimed invention. In view thereof, Applicant requests the reconsideration and withdrawal of the rejection of Claims 1,

4, 9, 10, 12-14, 18 and 19 under 35 U.S.C. §102 and ask that the Examiner indicate the allowance of the claims in the next paper from the Office.

*****

REJECTION UNDER 35 U.S.C. § 103:

Claims 1-5, 8-10, 12-16, 18 and 19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kuritani *et al.* (JP 61046723) in view of Palmer (US 4,560,148).

Applicants request that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

Initially addressing the Action's combination of Kuritani *et al.* (JP 61046723) in view of Palmer (US 4,560,148), it must be appreciated that a determination under 35 U.S.C.§103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370, 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617. The second requirement is that the

ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The examiner has the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of establishing a prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant. *In re Deuel*, 51 F.3d 1552, 1553, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

In the instance of the Kuritani *et al.* (JP 61046723) reference, Applicant assumes Examiner relies on the English-Language coversheet provided by the JPO, and possibly the drawings for the statements made in Section 13, Page 6 and 7 of the Action. In summary, Examiner states that Kuritani *et al.* (JP 61046723) discloses a dump control lever on a panel in the cabin of a dump truck adjacent to the steering wheel, but also states that Kuritani *et al.* (JP 61046723) lacks an actuator for activating a brake and shifting a transmission to neutral, but the disclosure of which is alleged to be found in a combination with *Palmer* '148. The cited motivation (last sentence of Section 13 at Page 7 of the Action) for the combination is that a person skilled in the art would modify Kuritani *et al.* (JP 61046723) according to *Palmer* '148 "in order to provide for easier and more comfortable control of the vehicle." Applicant submits that nothing in the art of record discloses, teaches or suggests this motivation for combination. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

In *Palmer* '148 it is expressly disclosed that that device is provided to facilitate the comfort of a driver of a log skidding vehicle having a retracting cable, and that "[w]hen

winching a log bunch to a skidding position (relative to the skidding vehicle), the vehicle operator simultaneously must turn in his seat to view the log bunch rearwardly of the vehicle, operate the winch control lever typically arranged alongside his seat, modulate engine speed to regulate winch speed and force with a governor control device and apply the service brakes of the vehicle to winch against subsequently to shifting the transmission into neutral." (Column 1, lines 22-30; *Palmer* '148). This is opposite to the motivation stated in the Action and therefore does not support the combination of Kuritani *et al.* (JP 61046723) taken in view of Palmer (US 4,560,148).

Regarding the independent claims, the arguments cited hereinabove with respect to the Actions anticipation rejection are reiterated relative to the obviousness rejection.

The recitation of Applicant's claim 2 is diametrically opposed to the disclosure of *Palmer* '148; Applicant recites therein that the maneuvering organ is arranged to be within the reach of a driver SIMULTANEOUSLY while the driver is maneuvering the steering wheel and the dumping lever of the vehicle. As stated hereinabove, In *Palmer* '148, it is expressly disclosed that that device is to facilitate the comfort of a driver of a log skidding vehicle having a retracting cable, and that "[w]hen winching a log bunch to a skidding position (relative to the skidding vehicle), the vehicle operator simultaneously must turn in his seat to view the log bunch rearwardly of the vehicle, operate the winch control lever typically arranged alongside his seat, modulate engine speed to regulate winch speed and force with a governor control device and apply the service brakes of the vehicle to winch against subsequently to shifting the transmission into neutral." (Column 1, lines 22-30; *Palmer* '148). In this regard, Applicant's recited invention is quite different from that disclosed in *Palmer* '148; and is therefore not obvious in view thereof.

Claims 6, 7, 11, 17 and 20 have not been substantively rejected, and therefore in view of Applicant's §112 remediation, are allowable.

*****

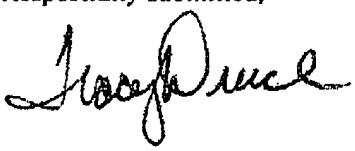
The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

Serial No.: 10/065,972
Confirmation No.: 3821
Applicant: SVENSSON, Gösta *et al.*
Atty. Ref.: 00173.0023.PCUS00

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 08-3038, Order No. 00173.0023.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,



Tracy W. Druce
Patent Attorney
Reg. No. 35,493
Tel. 202.293.7333